

2 – LOCAL IMPROVEMENTS

Compilation Number	Ordinance Number	Subject
2-1	[Repealed]	
2-2	[Repealed]	
2-3	[Repealed]	
2-4	[Repealed]	
2-5	[Repealed]	
2-6	[Repealed]	
2-7	1515	Water and Sewer Extensions
2-8	1795 as amended by 1805 and 2008	Public Right-of-Way Construction Permit Fees
2-9	[Repealed]	
2-10	[Repealed]	
2-11	1917	Sidewalk Construction and Repair
2-12	2105	Public Improvements Procedures
2-13	2237	Reimbursement District Process

ORDINANCE NO. 1515

AN ORDINANCE PROVIDING FOR PAYMENT OF THE COST OF EXTENDING WATER OR SEWER LINES BY PROPERTY OWNERS BENEFITING FROM SUCH EXTENSIONS; AND DECLARING AN EMERGENCY.

THE PEOPLE OF THE CITY OF WOODBURN DO ORDAIN:

Section 1. Subject to the reimbursable policy of the city subdivision ordinance in the event new water or sewer lines, or both, are required to service applicant's premises, said applicant will be required to finance the total cost of said lines.

Section 2. If any person is required by the city to pay the cost of extending water or sewer lines adjacent to property other than his own so that service for domestic use is available for such other property without further extension of the water or sewer lines, the city shall require the owner of the other property to refund to the person required to pay the cost of extending the lines a pro rata portion of the cost of the extensions. The right to require such refund shall not continue for more than 15 years after the date of installation of the extensions of the water or sewer lines. The amount to be refunded shall be determined by the common council, and such determination shall be final.

Section 3. The pro rata share shall be paid over directly to the applicant who financed the water or sewer to the city prior to the intervening property owner being entitled to connect to the water or sewer lines.

Section 4. [Emergency clause.]

Passed by the Council and approved by the Mayor May 24, 1976.

ORDINANCE NO. 1795

AN ORDINANCE PROVIDING FOR CONSTRUCTION PERMIT FEES FOR WORK IN PUBLIC RIGHT-OF-WAY; AND PROVIDING FOR DISPOSITION OF PROCEEDS.**THE PEOPLE OF THE CITY OF WOODBURN DO ORDAIN:**

Section 1. Permits. All street, water, sewer and storm drain service connections, installations, and alterations and franchisee installations and alterations, other than those activities exempted by Section 7 of this ordinance, in the City of Woodburn right-of-way shall require a permit from the City. The application shall be filed with the Public Works Department and at the time of issuance of the permit a fee shall be paid as outlined in Section 3 of this ordinance. No permit fee is required for those exempted by Section 4 or by Section 7 of this ordinance.

Section 2. Engineering Plan. Each type of construction project, such as water or sewer, will constitute a separate project. An engineering plan shall be required and reviewed by the City on all major construction projects before a permit can be issued. There shall be no charge for the engineering plan review and approval.

Section 3. Fees. The construction permit charge in the City of Woodburn shall be as follows:

<u>Cost</u>	<u>Fee</u>
Under \$5,000	5% of cost but not less than \$10
\$ 5,000 - \$25,000	\$ 250 + 4% over \$ 5,000
\$25,000 - \$100,000	\$1,000 + 3% over \$ 25,000
Over \$100,000	\$3,000 + 2% over \$100,000

Section 4. Franchisee Exemption. Franchisees will not be required to pay a permit fee, however, a percentage of the franchise fee shall be diverted to Public Works to cover the cost of permit, plan review and general inspection process.

Section 5. Public Works Technical Fund. Starting in the fiscal year 1983-84, and thereafter each succeeding year, the City Recorder shall transfer an amount equal to 4 percent (4%) of the franchise fee from telephone, electric, natural gas, and cable television to the Public Works Technical Fund, at the time of receipt. [Section 5 as amended by Ordinance No. 1805, passed January 10, 1983.]

Section 6. Construction Permit Fees Fund All payments received by the City under the provisions of Section 3 of this ordinance shall be deposited in, and credited to, the Construction Permit Fees Fund of the City of Woodburn, and used by the Public Works Department for engineering inspection and related activities.

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Section 7. Exemptions. The City may not require a construction permit fee on:

- (1) Construction activity performed by City crews.
- (2) Certain construction activities not involving underground main extensions by a franchisee.
- (3) Wheelchair ramp construction.
- (4) Construction activities outside improved portions of street and/or activities covered by other City fees.

Section 8. Materials and Methods. Only City approved materials and methods will be used on a project during excavation and fill in the public right-of-way.

Section 9. Inspections. A minimum of 24 hours notice shall be provided to the City to inspect an approved construction project.

Section 10. Interpretation and Enforcement. Interpretation and enforcement of this ordinance shall be the responsibility of the City Engineer.

Section 11. Civil Infraction Assessment. A violation of any provision of this ordinance constitutes a class 1 civil infraction and shall be dealt with according to the procedures established by Ordinance 1998. [Section 11 as amended by Ordinance 2008, passed October 24, 1988.]

Passed by the Council November 4, 1982, and approved by the Mayor November 9, 1982.

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ORDINANCE NO. 1917

AN ORDINANCE REGULATING THE CONSTRUCTION, ALTERATION AND REPAIR OF SIDEWALKS.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions. Unless the context requires otherwise, the following mean:

- (1) Person. A natural person, firm, corporation or other legal entity.
- (2) Sidewalks. The part of the street right-of-way or an easement which contains a walking structure between the curb lines on the pavement or gravel edge of a roadway and the adjacent property lines, including the driveway approach.
- (3) Major construction. Work that requires new construction or alteration and repair of more than 50% of the existing or future sidewalk area.
- (4) Minor construction. Work that requires alteration or repair of less than 50% of the existing sidewalk area.

Section 2. Duty to Repair Sidewalks. The owner of land adjoining a city street shall maintain in good repair the adjacent sidewalk whenever it becomes damaged or deteriorated in any way.

Section 3. Liability for Sidewalk Injuries.

- (1) The owner of real property responsible for maintaining the adjacent sidewalk shall be liable to any person injured because of failure of the owner to maintain the sidewalk in good condition.
- (2) If the City is required to pay damages for an injury to persons or property caused by the failure of a person to perform the duty which this ordinance imposes, the person shall reimburse the City for the amount of damages thus paid and the attorney fees and costs of defending against the claim of damages. The City may maintain an action in a court of competent jurisdiction to enforce the provisions of this section.

Section 4. Standards and Specifications. Sidewalks shall be constructed, altered and repaired in accordance with City standards and specifications.

Section 5. Submission of Plans. No person shall construct, alter or repair a sidewalk within the City without first making application for a permit and submitting the plans for the proposed work. The application shall be made to the City Engineer's office, and all applicable standards and specifications established under Section 4 shall be met by the plans, and thereafter the City Engineer or designee may issue a permit for the proposed work. There will be no charge for the permit.

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Section 6. Supervision of Work. The property owner or agent thereof, may perform construction, alteration or repair of sidewalks after obtaining a permit from the City Engineer's office. The City Engineer or designee may inspect any materials and construction details as in the Engineer's judgment may be necessary to insure compliance with the applicable standards and specifications.

Section 7. Notice to Repair or Make Alterations.

(1) When major construction is involved the Council shall, by motion, direct the City Engineer to issue a notice.

(2) When minor construction is involved and the repair or alteration is brought to the City Engineer's attention, the Engineer may issue a notice directly.

(3) The notice shall require the owner of the property adjacent to the sidewalk to complete the work within 60 days after service of notice. The notice shall also state that if the work is not completed by the owner within the 60-day time period, the City may complete it and assess the cost against the property adjacent to the sidewalk.

(4) The City Engineer shall cause a copy of the notice to be served upon the owner of the property adjacent to the sidewalk, or the notice may be served by registered or certified mail, return receipt requested. If after diligent search the owner is not discovered, the City Engineer shall cause a copy of the notice to be posted in a conspicuous place on the property, and such posting shall have the same effect as service of notice by mail or by personal service upon the owner of the property.

(5) The person serving the notice shall file with the Recorder a statement stating the time, place and manner of service of notice.

Section 8. City May Alter or Repair Sidewalk. If the sidewalk alteration or repair is not completed within 60 days after service of the notice, the City may complete it. Upon completion of the project, the City Engineer shall submit a report to the Council. The report shall contain an itemized statement of the cost of the work.

Section 9. Assessment for Sidewalk Work Done by City. Upon receipt of the report, the Council, by ordinance, shall assess the cost of the work against the property adjacent to the sidewalk. The assessment shall be a lien against the property and may be collected in the same manner as is provided for the collection of street improvement assessments.

Section 10. Sidewalk Construction Requested by the Property Owner. If a property owner petitions the Council for an order to build a sidewalk on the part of the street abutting his or her property, agrees to pay cash or to make application to pay the cost in installments as provided by the Bancroft Bonding Act (ORS 223.205 to 223.295), waives the right of service and publication of notice of construction, and consents to the assessment of the property upon which the sidewalk abuts, the Council

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may order the construction of the requested sidewalk, if in its judgment the sidewalk should be built.

Section 11. Penalty. A violation of any section of this ordinance constitutes a class 1 civil infraction and shall be handled according to the procedures established by ordinance relating to civil infractions.

Section 12. Severability. Each portion of this ordinance constitutes a class 1 civil infraction and shall be handled according to the procedures established by ordinance relating to civil infractions.

Section 13. Repeal. Ordinance No. 778 (enacted February 3, 1942) is repealed.

Passed by the Council July 8, 1985 and approved by the Mayor July 9, 1985.

ORDINANCE 2105

AN ORDINANCE PROVIDING PROCEDURES FOR LOCAL IMPROVEMENTS AND SPECIAL ASSESSMENTS; REPEALING ORDINANCE 1879, AND DECLARING AN EMERGENCY.**THE CITY OF WOODBURN ORDAINS AS FOLLOWS:****Section 1. Initiating Improvements.**

(1) When the Council considers it necessary to require that improvements to a street, sewer, water facility, sidewalk, parking, curbing, drain or other public improvement defined in ORS 223.387 be paid for in whole or in part by special assessment according to benefits conferred, the Council shall declare by resolution that it intends to make the improvement and direct the City Engineer to make a survey of the improvement and a written report.

(2) When owners of two-thirds of the property that will benefit specially by improvements defined in subsection (1) request by written petition that the Council initiate an improvement, the Council shall declare by resolution that it intends to make the improvement and direct the City Engineer to make a survey of the improvement and a written report.

Section 2. Engineer's Report. The Engineer's report may contain, but is not limited to, the following:

(1) A map or plat showing the general nature, location and extent of the proposed improvement and the land to be assessed for payment of the cost.

(2) Plans, preliminary sketches and estimates of work to be done. If the proposed project is to be carried out in cooperation with another governmental agency, the Engineer may adopt plans, specifications and estimates of that agency.

(3) An estimate of probable cost of the improvement, including legal, administrative and engineering cost.

(4) An estimate of unit cost of the improvement to the benefited properties, per square foot, per front foot, or another unit of cost.

(5) A recommendation concerning the method of assessment to be used to arrive at a fair apportionment of the whole or a portion of the cost of the improvement to the benefited properties.

(6) A description of each lot, parcel of land, or portion of land to be benefited, with names of the record owners and, when readily available, names of contract purchasers, as shown on books and records of the Marion County Tax Department. To describe each lot or parcel or land under provisions of this section, it shall be sufficient to use the tax account number assigned to the property by the tax department or shown on books and records of the Marion County Clerk.

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(7) A recommendation regarding the rate of interest, but it shall be as the governing body may determine based on a certain percent per annum, to be paid on assessments bonded under the Bancroft Bonding Act and ORS Chapter 223.

Section 3. Action on Engineer's Report. After reviewing the Engineer's report, the Council may approve the report, modify the report and approve it as modified, require the Engineer to supply additional or different information for the improvement, or abandon the improvement.

Section 4. Resolution and Notice of Hearing. After the Council has approved the Engineer's report as submitted or modified, the Council shall declare by resolution that it intends to make the improvement and direct the Recorder to give notice of the Council's intention by two publications, one week apart, in a newspaper of general circulation in the city. The notice shall contain the following:

(1) That the Council will hold a public hearing on the proposed improvement on a specified date, which shall be not less than 10 days after the first publication of notice, at which objections and remonstrances to the improvement will be heard by the Council; and that action on any proposed public improvement, except a sidewalk or except an improvement unanimously declared by the Council to be needed at once because of an emergency, shall be suspended for six months upon written remonstrance thereto by the owners of a majority of the land to be specially assessed therefor.

(2) A description of the property to be benefited by the improvement, owners of the property as shown on the books and records of the Marion County Tax Department, as the Engineer's estimate of total cost of the improvement to be paid by special assessment to benefited properties.

For purposes of this subsection it shall be sufficient to describe the property to be benefited by a metes and bounds description or by the tax account number assigned to the property and used by the Marion County Tax Department or the subdivision lot and block number or the book and page designations shown on books and records of the Marion County Clerk.

Section 5. Manner of Doing Work. The Council may at its discretion provide that the construction work may be done in whole or in part by the City, by contract, by another governmental agency, or by a combination of the above.

Section 6. Ordinance of Approval or Abandonment of Improvement. The Council may by ordinance at the time of the hearing or within 90 days thereafter, order the improvement carried out in accordance with the resolution, modify the proposed improvement, or, if the project was initiated by Council motion and not by petition of property owners, abandon the improvement.

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Section 7. Call for Bids. The City may advertise for bids for construction of all or any part of the improvement project on the basis of the Council-approved report and before the passage of the resolution, or after the passage of the resolution and before the public hearing on the proposed improvement, or at any time after the public hearing; provided however, that no contract shall be let until after the public hearing has been held to hear remonstrances and oral objection to the proposed improvement.

Section 8. Method of Assessment and Alternative Methods of Financing.

(1) The Council, in adopting a method of assessing the cost of the improvement, may:

(a) Use any just and reasonable method to determine the extent of any improvement district consistent with the benefits derived.

(b) Use any just and reasonable method of apportioning the sum to be assessed among the benefited properties.

(c) Authorize payment by the City of all or part of the cost of an improvement when in the opinion of the Council the topographical or physical conditions, unusual or excessive public travel, or other character of the work involved warrants only partial payment or no payment of the cost by the benefited property.

(2) Nothing contained in this section shall preclude the Council from using other means of financing improvements, including federal and state grant-in-aid, sewer charges or fees, revenue bonds, general obligation bonds, or other legal means of finance. If other means of financing are used, the Council may levy special assessments according to benefits derived to cover any remaining part of the cost.

Section 9. Final Assessment Ordinance.

(1) If the Council caused the public improvement to be made and the actual cost has been determined, upon completion of the project the Council shall determine whether the benefited property shall bear all or a portion of the cost. The Recorder or other person designated by the Council shall prepare the final assessment for each lot within the assessment district and file the assessments in the Records office.

(2) Notice of the proposed assessment shall be published and mailed or personally delivered to the owner of each lot proposed to be assessed at the address shown on the Marion County Tax Assessor's rolls. The notice shall state the amount of final assessment on the property and fix a date by which time any objections shall be filed with the Recorder and the date and time set for the public hearing at which the Council will hear objections. An objection shall state the grounds for the objection.

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(3) At the hearing the Council shall consider the objections and may adopt, correct, modify or revise the assessment against each lot in the district according to special peculiar benefits accruing to it from the improvement.

Section 10. Notice of Assessment.

(1) Within 10 days after the ordinance levying assessments has been passed, the Recorder shall send a notice of assessment to the owner of the assessed property by registered or certified mail and public notice of the assessment twice in a newspaper of general circulation in the city. The first publication of notice shall be not later than 20 days after the date of assessment ordinance.

(2) The notice of assessment shall include the name of the property owner, a description of the assessed property, the amount of the assessment, and the date of the assessment ordinance and shall state that interest will begin to run on the assessment and the property will be subject to foreclosure unless the owner either makes application to pay the assessment in installments within 10 days after the date of the first publication of notice or pays the assessment in full within 30 days after the date of the assessment ordinance.

Section 11. Lien Record and Foreclosure Proceedings.

(1) After passage of the assessment ordinance, the Recorder shall enter into the docket of liens a statement of the amount assessed on each lot, parcel of land or portion of land, description of the improvement, names of property owners, and the date of the assessment ordinance. Upon entry in the lien docket, the amounts shall become liens and charges on the lots, parcels of land or portions of land that have been assessed for improvement.

(2) Assessment liens of the City shall be superior and prior to all other liens or encumbrances on property insofar as state law permits.

(3) The City may enter a bid on property being offered at a foreclosure sale. The City bid shall be prior to all bids except those made by persons who would be entitled under state law to redeem the property.

Section 12. Errors in Assessment Calculations. Claimed errors in the calculation of assessments shall be called to the attention of the Recorder, who shall determine whether there has been an error. If there has been an error, the Recorder shall recommend to the Council an amendment to the assessment ordinance to correct the error. On enactment of the amendment, the Recorder shall make the necessary correction in the docket of liens and send a correct notice of assessment by registered or certified mail.

Section 13. Supplemental Assessments. If a supplemental assessment is required pursuant to Section 18 of this ordinance, the Council may declare the insufficiency by motion and prepare a proposed supplemental assessment. The

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Council shall set a time for hearing objections to the supplemental assessment and direct the City Recorder to publish one notice in a newspaper of general circulation in the city. After the hearing, the Council shall make a just and equitable supplemental assessment by ordinance, which shall be entered in the docket of liens as provided by Section 11. Notice of the supplemental assessment shall be published and mailed, and collection of the assessment shall be made in accordance with Sections 10 and 11.

Section 14. Rebates. If a rebate is required pursuant to Section 18 of this ordinance, the Council shall ascertain and declare the excess by ordinance. When declared, the excess amounts must be entered on the lien docket as a credit on the appropriate assessment. If an assessment has been paid, the person who paid it or that person's legal representative shall be entitled to payment of the rebate credit.

Section 15. Remedies.

(1) Subject to curative provisions of Section 17 and rights of the city to reassess as provided in Section 18, proceedings for writs of review and equitable relief may be filed not earlier than 30 days nor later than 60 days after filing written objection as provided by Section 9.

(2) A property owner who has filed a written objection with the Recorder before the public hearing may have the right to apply for a writ of review based on the Council's exercising its functions erroneously or arbitrarily or exceeding its jurisdiction to the injury of a substantial right of the owner, if the facts supporting the claim have been specifically set forth in the written objections.

(3) A property owner who has filed a written objection with the Recorder before the public hearing may begin an action for equitable relief based on a total lack of jurisdiction on the part of the city. If notice of the improvement was not sent to the owner and if the owner did not have actual knowledge of the proposed improvement before the hearing, the owner may file a written objection alleging lack of jurisdiction with the Recorder within 30 days after receiving notice or knowledge of the improvement.

(4) A provision of this section shall not be construed to lengthen the period of redemption or to affect the running of a statute of limitation. A proceeding on a writ of review or for equitable relief shall be abated if proceedings are begun and diligently pursued by the Council to remedy or cure alleged errors or defects.

Section 16. Abandonment of Proceedings. The Council may abandon proceedings for improvements made under Section 1 to 15 at any time before final completion of the improvements. If liens have been placed on property under this procedure, they shall be canceled, and payments made on assessments shall be refunded to the person who paid them or to that person's legal representatives.

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Section 17. Curative Provisions.

(1) An improvement assessment shall not be rendered invalid by reason of:

(a) Failure of the Engineer's report to contain all information required by Section 2.

(b) Failure to have all information required in the improvement resolution, assessment ordinance, lien docket, or notices required to be published and mailed.

(c) Failure to list the name or mail notice to an owner of property as required by this ordinance.

(d) Any other error, mistake, delay, omission, irregularity or other act, jurisdictional or otherwise, in the proceedings or steps specified, unless it appears that the assessment is unfair or unjust in its effect on the person complaining.

(2) The Council shall have authority to remedy and correct all matters by suitable action and proceedings.

Section 18. Reassessment. When an assessment, supplemental assessment, or reassessment for an improvement made by the city has been set aside, annulled, declared void, or its enforcement restrained by a court of this state or by a federal court having jurisdiction, or when the Council doubts the validity of the assessment, supplemental assessment, rebate, or any part of it, the Council may make a reassessment in the manner provided by state law.

Section 19. Severability. Each portion of this ordinance shall be deemed severable from any other portion. The unconstitutionality or invalidity of any portion of this ordinance shall not invalidate the remainder of this ordinance.

Section 20. Repeal. Ordinance No. 1879 is hereby repealed.

Section 21. [Emergency clause.]

Passed by the Council March 22, 1993, approved by the Mayor March 23, 1993.

ORDINANCE NO. 2237

AN ORDINANCE ESTABLISHING A PROCESS FOR THE FORMATION OF A REIMBURSEMENT DISTRICT IN ORDER TO PROVIDE A MECHANISM WHEREBY THE PROPERTIES WHICH WILL BENEFIT BY THE CONSTRUCTION OF THE REQUIRED PUBLIC IMPROVEMENTS BY CRAIG REALTY GROUP, WOODBURN LLC, WILL SHARE IN THE COST OF THOSE IMPROVEMENTS; PROTECTING THE PUBLIC INTEREST; AND DECLARING AN EMERGENCY.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions. The following terms are defined as follows for the purposes of this Ordinance.

- A. "City" means the City of Woodburn, Oregon.
- B. "Developer" means a person who is required or chooses to finance some or all of the cost of a street, water or sewer improvement which is available to provide service to property, other than property owned by the person, and who applies to the City for reimbursement for the expense of the improvement.
- C. "Development Permit" means any final land use decision, limited land use decision, expedited land division decision, partition, subdivision, or driveway permit.
- D. "Person" means a natural person, the person's heirs, executors, administrators or assigns; a firm, partnership, corporation, association or legal entity, its or their successors or assigns; and any agent, employee or representative thereof.
- E. "Public Improvement" means any construction, reconstruction or upgrading of water, stormwater, sewer or street improvements
- F. "Public Works Director" means the Public Works Director of the City of Woodburn.
- G. "Reimbursement Agreement" means the agreement between the Developer and the City which is authorized by the City Council and executed by the City Administrator, providing for the installation of and payment for reimbursement district public improvements.
- H. "Reimbursement District" means the area which is determined by the City Council to derive a benefit from the construction of public improvements, financed in whole or in part by the Developer.
- I. "Reimbursement Fee" means the fee required to be paid by a resolution of the City Council and the reimbursement agreement. The City Council resolution and reimbursement agreement shall determine the boundaries of the reimbursement district

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and shall determine the methodology for imposing a fee which considers the cost of reimbursing the Developer for financing the construction of the improvement within the reimbursement district.

Section 2. Application to Establish a Reimbursement District.

A. A person who is required to or chooses to finance some or all of the cost of a public improvement which will be available to provide service to property other than property owned by the person may by written application filed with the Public Works Director request that the City establish a reimbursement district. The public improvement must be of a size greater than that which would otherwise ordinarily be required in connection with an application for a building permit or development permit or must be available to provide service to property other than property owned by the Developer, so that the public will benefit by making the improvement.

B. The application shall be accompanied by an application fee, in the amount of \$1000, which the City Council has determined reasonable to cover the cost of the preparation of the Public Works Director's Report and notice pursuant to this ordinance.

C. The application shall include the following:

1. A written description of the location, type, size and cost of each public improvement which is to be eligible for reimbursement.

2. A map showing the boundaries of the proposed reimbursement district, the tax account number of each property, its size and boundaries.

3. A map showing the properties to be included in the proposed reimbursement district; the zoning district for the properties; the front footage and square footage of said properties, or similar data necessary for calculating the apportionment of the cost; the property or properties owned by the Developer; and the names and mailing addresses of owners of other properties to be included in the proposed reimbursement district.

4. The actual or estimated cost of the public improvements.

D. The application may be submitted to the City prior to the installation of the public improvement but not later than 180 days after completion and acceptance of the public improvements by the City.

Section 3. Public Works Director's Report. The Public Works Director shall review the application for the establishment of a reimbursement district and evaluate whether a district should be established. The Public Works Director may require the submission of other relevant information from the Developer in order to assist in the evaluation. The Public Works Director shall prepare a written report for the City Council that considers and makes a recommendation concerning each of the following factors:

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A. Whether the Developer will finance, or has financed some or all of the cost of the public improvement, thereby making service available to property, other than that owned by the Developer.

B. The boundary and size of the reimbursement district.

C. The actual or estimated cost of the public improvement serving the area of the proposed reimbursement district and the portion of the cost for which the Developer should be reimbursed for each public improvement.

D. A methodology for spreading the cost among the properties within the reimbursement district and, where appropriate, defining a “unit” for applying the reimbursement fee to property which may, with City approval, be partitioned, subdivided, altered or modified at some future date.

E. The amount to be charged by the City for an administration fee for the reimbursement agreement. The administration fee shall be fixed by the City Council and will be included in the resolution approving and forming the reimbursement district. The administration fee is due and payable to the City at the time the agreement is signed.

F. Whether the public improvements will or have met City standards.

G. Whether it is fair and in the public interest to create a reimbursement district.

Section 4. Amount to be Reimbursed.

A. A reimbursement fee shall be computed by the City for all properties within the reimbursement district, excluding property owned by or dedicated to the City or the State of Oregon, which have the opportunity to use the public improvements, including the property of the Developer, for formation of a reimbursement district. The fee shall be calculated separately for each public improvement. The Developer for formation of the reimbursement district shall not be reimbursed for the portion of the reimbursement fee computed for its own property.

B. The cost to be reimbursed to the Developer shall be limited to the cost of construction engineering, construction, and off-site dedication of right of way. Construction engineering shall include surveying and inspection costs and shall not exceed 7.5% of eligible public improvement construction cost. Costs to be reimbursed for right of way shall be limited to the reasonable market value of land or easements purchased by the Developer from a third party in order to complete off-site improvements.

C. No reimbursement shall be allowed for the cost of design engineering, financing costs, permits or fees required for construction permits, land or easements dedicated by the Developer, the portion of costs which are eligible for systems development charge credits or any costs which cannot be clearly documented.

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D. Reimbursement for legal expenses shall be allowed only to the extent that such expenses relate to the preparation and filing of an application for reimbursement.

E. Reimbursement for the amount of the application fee required by Section 2 on this ordinance.

Section 5. Public Hearing.

A. Within 45 days after the Public Works Director has completed the report required in Section 3, the City Council shall hold an informational public hearing in which any person shall be given the opportunity to comment on the proposed reimbursement district. Because formation of the reimbursement district does not result in an assessment against property or lien against property, the public hearing is for informational purposes only and is not subject to mandatory termination because of remonstrances. The City Council has the sole discretion after the public hearing to decide whether a resolution approving and forming the reimbursement district shall be adopted.

B. Not less than ten (10) days prior to any public hearing held pursuant to this Ordinance, the Developer and all owners of property within the proposed district shall be notified of the public hearing and the purpose thereof. Such notification shall be accomplished by either regular and certified mail or by personal service. Notice shall be deemed effective on the date that the letter of notification is mailed. Failure of the Developer or any affected property owner to be so notified shall not invalidate or otherwise affect any reimbursement district resolution or the City Council's action to approve the same.

C. If a reimbursement district is formed prior to construction of the improvement(s), a second public hearing, subject to the same notice requirements, shall be held after the improvement has been accepted by the City. At that time, the City Council at its discretion may modify the resolution to reflect the actual cost of the improvement(s).

Section 6. City Council Action.

A. After the public hearing held pursuant to Section 5(A), the City Council shall approve, reject or modify the recommendations contained in the Public Works Director's report. The City Council's decision shall be contained in a resolution. If a reimbursement district is established, the resolution shall include the Public Works Director's report as approved or modified, and specify that payment of the reimbursement fee, as designated for each parcel, is a precondition of receiving any city permits applicable to development of that parcel as provided for in Section 10.

B. The resolution shall establish an interest rate to be applied to the reimbursement fee as a return on the investment of the Developer. The interest rate shall be fixed and computed against the reimbursement fee as simple interest and will not compound.

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C. The resolution shall instruct the City Administrator to enter into an agreement with the Developer pertaining to the reimbursement district improvements. If the agreement is entered into prior to construction, the agreement shall be contingent upon the improvements being accepted by the City. The agreement shall contain at least the following provisions:

1. The public improvement(s) shall meet all applicable City standards.
2. The total amount of potential reimbursement to the Developer shall be specified.
3. The total amount of potential reimbursement shall not exceed the actual cost of the public improvement(s).
4. The Developer shall guarantee the public improvement(s) for a period of twelve (12) months after the date of installation.
5. A clause in a form acceptable to the City Attorney stating that the Developer shall defend, indemnify and hold harmless the City from any and all losses, claims, damage, judgments or other costs or expense arising as a result of or related to the City's establishment of the reimbursement district, including any City costs, expenses and attorney fees related to collection of the reimbursement fee should the City Council decide to pursue collection of an unpaid reimbursement fee under Section 10(H).
6. A clause in a form acceptable to the City Attorney stating that the Developer agrees that the City, can not be held liable for any of the Developer's alleged damages, including all costs and attorney fees, under the agreement or as a result of any aspect of the formation of the reimbursement district, or the reimbursement district process, and that the Developer waives, and is estopped from bringing, any claim, of any kind, including a claim in inverse condemnation, because the Developer has benefited by the City's approval of its development and the required improvements.
7. Other provisions the City determines necessary and proper to carry out the provisions of this Ordinance.

A. If a reimbursement district is established by the City Council, the date, of the formation of the district shall be the date that the City Council adopts the resolution forming the district.

Section 7. Notice of Adoption of Resolution. The City shall notify all property owners within the district and the Developer of the adoption of a reimbursement district resolution. The notice shall include a copy of the resolution, the date it was adopted and a short explanation specifying the amount of the reimbursement fee and that the property owner is legally obligated to pay the fee pursuant to this ordinance.

2-13.8

2-13.10

Section 8. Recording the Resolution. The City Recorder shall cause notice of the formation and nature of the reimbursement district to be filed in the office of the Marion County Clerk so as to provide notice to potential purchasers of property within the district. Said recording shall not create a lien. Failure to make such recording shall not affect the legality of the resolution or the obligation to pay the reimbursement fee.

Section 9. Contesting the Reimbursement District. No legal action intended to contest the formation of the district or the reimbursement fee, including the amount of the charge designated for each parcel, shall be filed after sixty (60) days following the adoption of a resolution establishing a reimbursement district and any such legal action shall be exclusively by Writ of Review pursuant to ORS 34.010 to ORS 34.102.

Section 10. Obligation to Pay Reimbursement Fee.

A. The applicant for a permit related to property within any reimbursement district shall pay the City, in addition to any other applicable fees and charges, the reimbursement fee established by the Council, if within 10 years after the date of the passage of the resolution forming the reimbursement district, the person applies for and receives approval from the City for any of the following activities:

1. A building permit for a new building;
2. Building permits(s) for any addition(s) modification(s), repair(s) or alteration(s) of a building, which exceed twenty five percent (25%) of the value of the building within any 12-month period. The value of the building shall be the amount shown on the most current records of the county Department of Assessment and Taxation for the building's real market value. This paragraph shall not apply to repairs made necessary due to damage or destruction by fire or other natural disaster;
3. A development permit, as that term is defined by this ordinance;
4. A City permit issued for connection to a public improvement.

B. The City's determination of who shall pay the reimbursement fee and when the reimbursement fee is due is final.

C. In no instance shall the City, or any officer or employee of the City, be liable for payment of any reimbursement fee, or portion thereof, as a result of the City's determination as to who should pay the reimbursement fee. Only those payments which the City has received from or on behalf of those properties within a reimbursement district shall be payable to the Developer. The City's general fund or other revenue sources shall not be liable for or subject to payment of outstanding and unpaid reimbursement fees imposed upon private property.

D. Nothing in this ordinance is intended to modify or limit the authority of the City to provide or require access management.

2-13.10

2-13.11

E. Nothing in this ordinance is intended to modify or limit the authority of the City to enforce development conditions which have already been imposed against specific properties.

F. Nothing in this ordinance is intended to modify or limit the authority of the City, in the future, to impose development conditions against specific properties as they develop.

G. No person shall be required to pay the reimbursement fee on an application or upon property for which the reimbursement fee has been previously paid, unless such payment was for a different type of improvement. No permit shall be issued for any of the activities listed in subsection 10(A) unless the reimbursement fee, together with the amount of accrued interest, has been paid in full. Where approval is given as specified in subsection 10(A), but no permit is requested or issued, then the requirement to pay the reimbursement fee lapses if the underlying approval lapses.

H. The date of reimbursement under this Ordinance shall extend ten (10) years from the date of the formation of a reimbursement district formation by City Council resolution.

I. The reimbursement fee is immediately due and payable to the City by property owners upon use of a public improvement as provided by this ordinance in section 10(A). If connection is made or construction commenced without required city permits, then the reimbursement fee is immediately due and payable upon the earliest date that any such permit was required.

J. Whenever the full reimbursement fee has not been paid and collected for any reason after it is due, the City Administrator shall report to the City Council the amount of the uncollected reimbursement, the legal description of the property on which the reimbursement is due, the date upon which the reimbursement was due and the property owner's name or names. The City Council shall then, by motion, set a public hearing date and direct the City Administrator to give notice of that hearing to each of the identified property owners, together with a copy of the City Administrator's report concerning the unpaid reimbursement fee. Such notice may be either by certified mail or personal service. At the public hearing, the City Council may accept, reject or modify the City Administrator's report. If the City Council determines that the reimbursement fee is due but has not been paid for whatever reason, the City Council may, at its sole discretion, act, by resolution, to take any action, it deems appropriate, including all legal or equitable means necessary to collect the unpaid amount. After the City Council has made the determination that the reimbursement fee is due but has not been paid, the Developer shall have a private cause of action against the person legally responsible for paying the reimbursement fee.

Section 11. Public Improvements. Public improvements installed pursuant to reimbursement district agreements shall become and remain the sole property of the City.

2-13.12

2-13.16

Section 12. Multiple Public Improvements. More than one public improvement may be the subject of a reimbursement district.

Section 13. Collection and Payment; Other Fees and Charges.

A. The Developer shall receive all reimbursement collected by the City for reimbursement district public improvements. Such reimbursement shall be delivered to the Developer for as long as the reimbursement district agreement is in effect. Such payments shall be made by the City within ninety (90) days of receipt of the reimbursements.

B. The reimbursement fee is not intended to replace or limit, and is in addition to, any other existing fees or charges collected by the City.

Section 14. Nature of the Fees. The City Council finds that the fees imposed by this Ordinance are not taxes subject to the property tax limitations of Article XI, section 11(b) of the Oregon Constitution.

Section 15. Severability. If any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of this ordinance shall remain in effect.

Section 16. [Emergency clause.]

Passed by the Council and approved by the Mayor June 28, 1999.